IN THE COURT OF APPEALS OF IOWA

No. 7-793 / 97-1207

000245

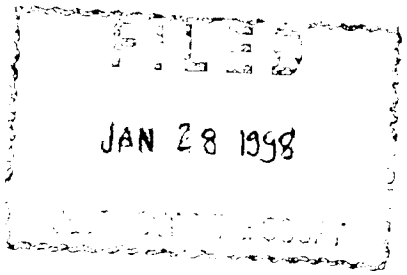
IN THE INTEREST OF J.M. and C.W.,

Minor Children,

vs.

B.W., Mother,

Appellant.



Appeal from the Iowa District Court for Scott County, Michael A. Woods, Associate Juvenile Judge.

The mother of two minor children appeals a juvenile court order terminating her parental rights. **AFFIRMED.**

Judith J. Morrell, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, and Gerda C. Lane, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Sackett, and Streit, JJ.

CADY, C.J.

A mother appeals the decision of the juvenile court terminating her parental rights to her children. She claims the State did not adequately show the children could not be returned to her care and termination is not in the best interests of the children. She also claims the State did not engage in reasonable efforts to reunite her with the children. We affirm on appeal.

Brenda is the mother of Justin, born in June 1987, and Codie, born in August 1995. The children's fathers have not been involved with their lives are not parties to this appeal.

The family came to the attention of the Department of Human Services (DHS) in January 1996. Brenda had left the children in the care of her thirteen year old niece, who had behavioral problems. The home was very dirty and had dog feces on the floor. Codie had severe diaper rash. Brenda had been feeding Codie two percent milk instead of formula, and he appeared malnourished. Codie also had breathing problems. Both of the children had head lice. Brenda had previously been fined for not sending Justin to school. The children were removed from the home and placed in foster care. DHS issued a founded report of denial of critical care. Brenda was charged with child endangerment, and she subsequently pled guilty to assault with injury.

The children were adjudicated to be children in need of assistance. In the disposition order, the court adopted the case permanency plan. Brenda was required

to attend individual parenting education sessions, complete a substance abuse evaluation, and maintain stable housing. Brenda participated in supervised visitation with the children.

Codie's medical problems quickly resolved once he was placed in foster care. Initially, he appeared to be very hungry. Justin was diagnosed with attention deficit hyperactivity disorder. He has some behavioral problems and attends therapy. Justin observed domestic violence while Brenda was married to Codie's father. Justin needs a stable, secure environment.

Brenda has been resistant to services and refused to take responsibility for her actions. Brenda was inconsistent in attending individual parenting education sessions. She completed parenting class, but was not able to implement information she learned in class. Brenda had a substance abuse evaluation, but no treatment was indicated. During visitation, Brenda paid more attention to Codie, and this caused Justin to engage in negative attention seeking behavior.

Brenda did not have stable housing In February 1996, Brenda moved from Iowa to Illinois to live with a friend, Marty. By June 1996, Brenda was living in Iowa with Mark. In October 1996, she moved to a different residence. She subsequently moved back with Mark.

In October 1996, Brenda began a trial period of unsupervised visitation with Justin. A social worker made a drop-in visit at 8:30 p.m. and found Brenda and Justin were not at home. Justin later reported they had gone to a billiard hall. Justin was

tired in school the next day. Justin also reported Brenda did his homework for him so he could play games. After unsupervised visits Justin began having more behavioral problems. DHS subsequently determined Brenda should have only supervised visitation.

Brenda continued to engage in inappropriate behavior during visitation. When Codie became older and more active Brenda did not adequately watch him which led to some safety concerns. For instance, once Codie almost fell down the stairs, and a social worker had to grab him. She showed Justin a picture of Mark while he was drunk, and gave Justin a shot glass as a present.

In February 1997, the State filed a petition for termination of parental rights. The juvenile court noted Brenda's bearing and demeanor spoke volumes about her ability to parent her children--Brenda projected a hostile attitude. The court terminated Brenda's parental rights to Justin under Iowa Code section 232.116(1)(g), and her parental rights to Codie under section 232.116(1)(e). The parental rights of the children's fathers were also terminated. Brenda appeals.

I. The scope of review in termination cases is de novo. *In re S.N.*, 500 N.W.2d 32, 34 (Iowa 1994). The grounds for termination must be proven by clear and convincing evidence. *In re E.K.*, 568 N.W.2d 829, 830 (Iowa App. 1997). Our primary concern is the best interests of the children. *In re A.B.*, 554 N.W.2d 291, 293 (Iowa App. 1996).

II. Brenda contends the State failed to show, by clear and convincing evidence, the children could not be returned to her care as required by sections 232.116(1)(e)(4) and (g)(4). She believes the State's concerns could be addressed with in-home services.

We find the children could not be returned to Brenda's care at this time. Brenda has not obtained stable housing. She has not shown she can provide the supervision the children need. The children would be at risk due to Brenda's lack of supervision. Brenda demonstrated poor parenting choices when she had unsupervised visitation with Justin and also during supervised visitation with both children. We find her parental rights were properly terminated under sections 232.116(1)(e) and (g).

III. Brenda asserts termination is not in the best interests of the children. She claims the separation would be especially detrimental to Justin. We find termination is in the children's best interests. Justin has special needs which Brenda is not able to meet. Brenda's unstable lifestyle contributes to Justin's behavioral problems. Also, Codie's physical condition has dramatically improved while he was in foster care.

IV. Brenda claims the State did not engage in reasonable efforts to reunite her with the children. She believes she should have received a psychological

evaluation. She asserts such an evaluation was necessary to determine whether the other services provided in the case were adequate.

Parents have an obligation to demand services prior to the termination hearing. *In re B.K.K.*, 500 N.W.2d 54, 57 (Iowa 1993). Services should be challenged when the case plan is entered. *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa App. 1994). We find no evidence Brenda requested additional services prior to the termination hearing. In fact, she was asked at a staffing in April 1997 if there were any additional services she needed, and she did not request any other services. We find Brenda has not sufficiently preserved this issue for our review.

We affirm the decision of the juvenile court terminating Brenda's parental rights to Justin and Codie.

AFFIRMED.

Streit, J., concurs; Sackett, J., specially concurs without opinion.